

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Numbering Resource Optimization)
)
Further Notice of Proposed Rulemaking)

CC Docket No. 99-200 /

REPLY COMMENTS OF WORLDCOM, INC.

Initial comments in this proceeding show that the Commission should: (1) decline to establish any mandatory utilization threshold for growth codes at this time and withdraw all grants of authority allowing state commissions to set such thresholds; (2) plan a relatively brief transition period for implementation of pooling by non-LNP-capable carriers; (3) shelve any plans to implement a market-based mechanism for the allocation of numbering resources; and (4) allow incumbent local exchange carriers (ILECs) to recover legitimate Category 1 and Category 2 costs associated with national pooling implementation through end user charges.

I. Utilization Threshold

The Commission should not move forward at this time with its plan to establish a mandatory utilization threshold for a number of reasons. First, as many commenters demonstrate, the Commission's equation for calculating utilization levels suffers from serious infirmities.¹ The equation excludes from its numerator many telephone numbers

¹ See, e.g., Comments of SBC Communications Inc. at 7-8.

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that are not available for assignment to end user customers. It is quite likely that the Commission will receive petitions for reconsideration of that equation. Until those petitions are resolved, the Commission should suspend its plan to establish a mandatory threshold. If the Commission decides not to suspend its plan, it should establish thresholds far lower than those contemplated earlier to compensate for the misleadingly lower utilization levels that the equation will produce.

Second, as WorldCom, Inc. (WorldCom) and other commenters show, any mandatory threshold will inevitably prevent service providers from obtaining numbers that they require to serve customers.² In so doing, the threshold will systematically discriminate against service providers with smaller inventories, and deprive customers of a choice of providers. To remedy this, many commenters recommend that the Commission fashion a “safety valve” to allow carriers with legitimate needs to obtain numbers despite their failure to meet the threshold.³ While WorldCom has strongly supported such a mechanism, the need for the safety valve demonstrates the foolishness of any threshold.

A threshold without a safety valve would prevent carriers that need numbers from obtaining them. A threshold with a safety valve ensures that carriers can always obtain numbers when they need them, but will allow carriers that do not actually need numbers to receive them.⁴ The Commission should eliminate all mandatory utilization thresholds, including those established by state commissions, and simply require that applicants for growth codes show either: (1) that utilization combined with recent growth justifies an

² Comments of WorldCom, Inc. at 1-2. *See also* Comments of the Competitive Telecommunications Association at 3.

³ *See, e.g.,* Comments of the New York Department of Public Service at 2.

additional code; or (2) that a legitimate business need, such as a large customer or a seasonal sales spike, justifies an additional code. In no case should the Commission's rules prevent a service provider from obtaining resources when those resources will be needed within the next six months. The California Public Utility Commission has recommended that the only exception to the utilization threshold should be if a carrier demonstrates that its supply will exhaust within three months.⁵ But three months are simply not enough time to ensure that a code is activated in all networks and ready for assignment of numbers to customers.

Third, the record is distinguished by the remarkable absence of any evidence to show the appropriateness of a particular utilization threshold. No party provides any documentation to support any threshold. Presumably the Commission intends that the selected threshold would bar applications from carriers that do not need numbers, while allowing applications from those that do. Yet no one has described a nexus between their recommended threshold and the average utilization of carriers that require growth codes. The selection of a threshold based on this record would be the equivalent of pulling a number from a hat. WorldCom has recommended that the Commission charge NANPA with gathering data on the average utilization of carriers that seek growth codes.⁶ Such data would provide at least some evidentiary basis for selection of a threshold.

⁴ This will happen when a carrier with low growth in a particular rate area reaches the threshold. Such a carrier may not need additional resources for a year or longer. Yet the carrier will qualify for a growth code under the utilization threshold.

⁵ Further Comments of the California Public Utilities Commission and the People of the State of California at 5. The CPUC may be operating under the mistaken assumption that since LERG activation takes up to 66 days, numbers from a newly-opened NXX can be assigned to customers shortly after that 66-day period.

⁶ Comments of WorldCom, Inc. at 3.

Fourth, requests by state commissions for flexibility in applying utilization thresholds merely demonstrate their impracticality.⁷ It may be true, e.g., that utilization levels in rural areas will be lower than their urban counterparts. Varying growth rates might also justify varying utilization thresholds. But it is also true that a uniform system of numbering administration cannot abide such variance. Carriers should be able to expect a uniform code application process. Once again, it becomes clear that utilization levels are a poor proxy for service provider need. The Commission should simply concede that a mandatory utilization threshold is unwise, and allow carriers to obtain growth codes based on a showing of need as described above.

Initial comments on utilization thresholds raise a couple of additional issues. The suggestion by the Pennsylvania Public Utility Commission that there should be an NPA-wide utilization threshold that must be met before assignment of NXX codes from a relief NPA, is utterly without merit.⁸ Regardless of whether numbers are assigned by NXX code or by thousand-block, stranded numbers stay stranded. Unless the Commission pursues optimization measures that break the bond between NPA-NXX and rate area, it is inevitable that NPAs with relatively low utilization will require relief. To bar such relief, and thereby deny carriers and customers access to numbering resources would plainly violate the statutory mandate that numbers be made available on an equitable basis.⁹

Commenters generally agree that utilization should be measured at the rate area level, not on an NPA-wide basis. However, SBC recommends that utilization be measured at the lowest code assignment point (LCAP).¹⁰ WorldCom agrees that

⁷ See, e.g., Comments of the Missouri Public Service Commission at 2.

⁸ Comments of the Pennsylvania Public Utility Commission at 4.

⁹ 47 U.S.C. § 251(e)(1).

¹⁰ Comments of SBC Communications, Inc. at 7.

utilization should be measured in this manner. If today carriers assign resources on a sub-rate area basis, then their utilization should be measured on that basis. However, the Commission may wish to examine whether or not resource optimization would be promoted by requiring carriers to assign resources at the rate area level. WorldCom is currently working towards the capability to share resources among switches in the same rate area. The Commission may decide that other carriers should pursue this same capability.

II. Implementation of Pooling for Non-LNP-Capable Carriers

Initial comments show that implementation of pooling by wireless carriers will require additional network and OSS upgrades beyond those needed for LNP implementation.¹¹ WorldCom supports establishment of a relatively brief transition period for pooling implementation by covered CMRS providers. Based on initial comments, it appears that a 6-9 month transition will be sufficient to ensure a smooth implementation of pooling by these providers.

Like Sprint, WorldCom is concerned about the coincidence of the expirations of the forbearance period and wireless resale obligations.¹² The Commission must ensure that wireless portability is working properly before unleashing the massive porting that could occur upon expiration of mandatory resale. WorldCom again urges the Commission to establish a transition period for any resellers who must port entire customer bases away from facilities-based providers that seek to terminate wholesale relationships.

¹¹ See, e.g., Comments of Sprint Corporation at 10.

¹² *Id.* at 12-13.

III. Pricing for Numbers

Commenters are nearly unanimous in their opposition to adoption of a pricing mechanism for numbering resources. As many parties point out, and as WorldCom argued in comments filed last year, the Commission simply lacks the authority to adopt such a mechanism.¹³ Moreover, even if the Commission had such authority, WorldCom and other commenters have shown that the proposal is impractical. The Commission could not establish a true free market for numbering resources, and would instead have to rely on some sort of administrative pricing mechanism. It is likely that administrative pricing would in some circumstances discourage socially beneficial uses of numbers, and in others allow sub-optimal uses. Instead of placing its hopes in this chimerical solution, the Commission should continue to pursue optimization measures that allow more rational assignment and use of numbering resources.

IV. Cost Recovery

It is clear that ILECs will incur costs, both shared and carrier-specific, to implement pooling. Insofar as the Commission determines that these costs are recoverable, they must be recovered in end user charges. WorldCom does not object to Bell Atlantic's suggestion that ILECs recover pooling costs either by extending LNP surcharges for some length of time, or by increasing the existing surcharges as necessary.¹⁴ Alternatively, the Commission could establish an additional surcharge specifically to recover pooling costs. However, the Commission should decline U S

¹³ See, e.g., Comments of GTE Service Corporation at 11-12.

¹⁴ Further Comments of Bell Atlantic at 6.

West's invitation to add the recurring costs of pooling to subscriber line charges.¹⁵ If the Commission simply added these costs to price cap mechanisms, there would be no assurance that they would actually end up in subscriber line charges. Instead, they might flow into carrier common line charges or multi-line business PICCs. Rather than complicating the calculation of subscriber line charges, the Commission should simply allow recovery via another end user charge. Either the LNP charge or a new charge would be preferable to subscriber line charges.

In no case should the Commission allow recovery through carrier access charges. As many parties show, such cost recovery is not competitively neutral and is harmful to competition in access and interexchange markets.¹⁶ The Commission should instead allow all ILECs, including NECA carriers, to recover legitimate national pooling implementation costs through end user charges.

Comments filed by the ILECs show that the Commission must carefully examine all costs for which recovery is sought. Application of the Commission's "but for" test suggests that many of the costs for which the ILECs may seek recovery, should not be recoverable as national pooling implementation costs. In many cases, the alleged network and system upgrades are necessary either to participate in state-mandated pooling trials or to provide number portability.

The Commission has made clear that states must provide cost recovery for state-mandated pooling trials.¹⁷ To participate in these trials, all carriers including ILECs may make certain network and system upgrades. Insofar as an ILEC makes such upgrades to

¹⁵ Comments of U S West Communications, Inc. at 2.

¹⁶ See, e.g., Comments of the Ad Hoc Telecommunications Users Committee at 20.

¹⁷ *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking (rel. March 31, 2000), ¶ 197.

participate in state trials, it must recover the costs of those upgrades from whatever cost recovery mechanisms the states provide. U S West's suggestion that the Commission should allow recovery for costs incurred to support state pooling trials is meritless.¹⁸ It is not even clear that the Commission could legally allow federal cost recovery for costs incurred to support state pooling trials. Since these costs do not meet the "but for" test, the Commission should not allow their recovery by a national mechanism.

The Commission should also disallow recovery of costs for upgrades needed to support LNP implementation. The Telecommunications Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."¹⁹ The statute's plain language requires all LECs to permit end users to retain their telephone number when changing service providers.²⁰ Costs incurred to support this capability must be recovered through LNP cost recovery mechanisms. Yet U S West's initial comments plainly show that U S West intends to seek recovery in the pooling mechanism of costs more properly associated with LNP implementation. For example, to provide number portability to customers with CLEC-assigned telephone numbers, U S West would have to make switch modifications to accommodate a larger number of NXXs. But U S West has included in its cost estimates a number of upgrades for this very functionality.²¹

¹⁸ Comments of U S West Communications, Inc. at 3.

¹⁹ 47 U.S.C. § 153(30).

²⁰ 47 U.S.C. § 251(b)(2).

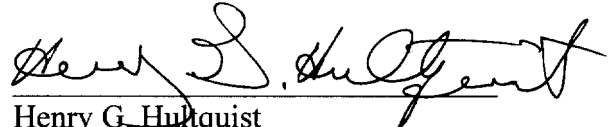
²¹ Comments of U S West Communications, Inc. at 5.

In many cases U S West appears to have included the total cost of expenditures that, while not caused by pooling, may be accelerated to accommodate pooling. For example, SCP upgrades and additional CCS links would have been needed at some point in the future to support increased volumes of ported numbers (e.g., from implementation of wireless portability). In these cases, the Commission should allow recovery in pooling charges only for the difference between the total cost and the net present value of that cost if implemented in the future as an ordinary network upgrade. As these examples show, the Commission must closely examine all costs for which ILECs seek recovery to ensure that they meet the "but for" test.

Finally, the Commission must reject outright SBC's outrageous proposal that ILECs be reimbursed for "costs caused by the development of local competition."²² When Congress passed the Telecommunications Act, it explicitly identified opening telecommunications markets to competition as a fundamental principle of U.S. telecommunications policy because such competition will benefit the American public. All telecommunications providers -- incumbents and new entrants alike -- must share in the burdens associated with the transition from monopoly to competition. That burden would not be shared equitably if one set of providers could impose its transition costs on another set of providers. In competitive markets, no service provider is guaranteed cost recovery; to do so undermines the very concept of a competitive market. Moreover, it would be impossible to demonstrate which numbering-related costs are attributable to local competition. Many of the costs of area code relief or other numbering-related activities that the industry faces going forward are the result of historic practices (assigning 10,000 numbers at a time and limiting their use to a single rate area) that may

actually help ILECs to retain their monopoly by making it more difficult for competitors to enter a market and offer innovative new services.

Respectfully submitted,
WorldCom, Inc.

A handwritten signature in black ink, appearing to read "Henry G. Hultquist", written over a horizontal line.

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June 9, 2000

²² Comments of SBC Communications Inc. at 6.

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I, Vivian Lee, do hereby certify that copies of the foregoing Reply Comments of WorldCom, Inc. In the Matter of Numbering Resource Optimization, Further Notice of Proposed Rulemaking were sent via first class mail, postage paid, to the following on this 9th day of June, 2000.

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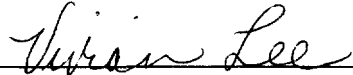
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